

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOHNNIE MICKELL,

Plaintiff,

v.

LYCOMING COUNTY CENTRAL  
COLLECTIONS OFFICE AND  
ADMINISTRATION,

Defendant.

No. 4:20-CV-00268

(Judge Brann)

(Magistrate Judge Saporito)

**ORDER**

**APRIL 28, 2020**

Johnnie Mickell filed this 42 U.S.C. § 1983 civil rights complaint alleging that Defendant violated his rights by seeking to collect a past-due judgment imposed against Mickell by the Court of Common Pleas of Lycoming County.<sup>1</sup> On February 19, 2020, Magistrate Judge Joseph F. Saporito, Jr., issued a Report and Recommendation recommending that this Court *sua sponte* dismiss as legally frivolous Mickell's complaint.<sup>2</sup>

Mickell belatedly filed his objections to the Report and Recommendation on March 9, 2020.<sup>3</sup> Where no timely objection is made to a report and recommendation,

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<sup>1</sup> Doc. 1.

<sup>2</sup> Doc. 6.

<sup>3</sup> Doc. 8.

this Court will review the recommendation only for clear error.<sup>4</sup> However, “[i]f a party objects timely to a magistrate judge’s report and recommendation, the district court must ‘make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.’”<sup>5</sup> Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the magistrate judge’s findings or recommendations.<sup>6</sup>

Because Mickell’s objections were not timely filed, the Report and Recommendation is properly reviewed only for clear error. However, even reviewing the recommendation de novo, the Court finds no error in Magistrate Judge Saporito’s conclusion that Mickell’s claims are barred by sovereign immunity.<sup>7</sup>

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<sup>4</sup> Fed. R. Civ. P. 72(b), advisory committee notes; *see Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining that court should in some manner review recommendations regardless of whether objections were filed).

<sup>5</sup> *Equal Emp’t Opportunity Comm’n v. City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017) (quoting 28 U.S.C. § 636(b)(1)).

<sup>6</sup> 28 U.S.C. § 636(b)(1); Local Rule 72.31.

<sup>7</sup> The Court notes that Mickell has filed an appeal of Magistrate Judge Saporito’s previous Order granting Mickell’s motion to proceed *in forma pauperis* but withholding service of the complaint pending review of this Report and Recommendation. (Doc. 7). Ordinarily, “the filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” *United States v. Santarelli*, 929 F.3d 95, 106 (3d Cir. 2019) (brackets and internal quotation marks omitted). However, “the jurisdiction of the lower court to proceed in a cause is not lost by the taking of an appeal from an order or judgment which is not appealable.” *Venen v. Sweet*, 758 F.2d 117, 121 (3d Cir. 1985). There appear to be no jurisdictional grounds for Mickell’s appeal of Magistrate Judge Saporito’s prior non-final order, and that appeal therefore does not deprive this Court of jurisdiction to consider the Report and Recommendation.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Magistrate Judge Joseph F. Saporito, Jr.'s Report and Recommendation (Docs. 6) is **ADOPTED**;
2. Mickell's complaint (Doc. 1) is **DISMISSED** with prejudice; and
3. The Clerk of Court is directed to **CLOSE** this case.

BY THE COURT:

*s/ Matthew W. Brann*

Matthew W. Brann

United States District Judge